IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3277 of 1997

Between:

K.Nagendar Goud S/o.Kistaiah Work Inspector,

R/o.Alwanpalli,Jedcherla Mandal Mahaboobnagar District.

..... PETITIONER

AND

1. Andhra Pradesh State Housing Corporation,Hyderabad Rep.by its Managing Director, Urdugally Himayathnagar, Hyderabad.

2. District Collector/Executive Director, Mahabubnagar District/A.P.State Housing Corporation Ltd., Mahabubnagar.

3. G.Narayana S/o.G.Narasappa, Assistant Engineer, O/o.Dy.Executive Engineer, A.P.State Housing Corporation Narayanpet, Mahabubnagar District, r/o.Makthal Vill. & Mandal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or writ specially Mandamus directing the respondent corporation to appoint the petitioner as Asst.Engineer by granting attendant benefits W.e.f.1-1-1991 and monitory benefits w.e.f.26-09-92 on par with the assistant engineers by reverting the respondent no.3 from the post of Assistant Engineer and set aside the impugned proceedings No.A9/3146/95 dated 08-02-97 in so far as it relates to respondent No.3 by declaring the same as violative of Article 14 of the Constitution of India and contrary to both Rule of reservation and A.P. State Housing Corporation Ltd., Employees Special Service rules and pass such other or further orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.L.PRABHAKAR REDDY.

Counsel for the Respondents No.1 & 2: MR.V.CH.NAIDU.

Counsel for the Respondent No.3: Mr. A. RAJASEKHAR REDDY.

The Court made the following :

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

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W.P.No. 3277 of 1997

O R D E R:

This Writ Petition is filed by the petitioner seeking writ of mandamus directing the respondent Corporation to appoint the petitioner as Assistant Engineer by granting all attendant benefits with effect from 1.1.1991 and monetary benefits with effect from 26.9.1992 on par with the Assistant Engineers by reverting the Respondent No.3 from the post of Assistant Engineer and set aside the impugned proceedings No. A9/3146/95, dated 08-02-1997 insofar as it relates to the 3rd respondent by declaring that the same is contrary to the Rules and offending the provisions of the Constitution of India.

2. According to the petitioner, he acquired the qualification of L.C.E., (Diploma in Civil Engineering) and registered his name in the Employment Exchange. Upon sponsoring by the Employment Exchange, the petitioner was appointed as Work Inspector on 12.4.1986. Further, he was kept in-charge of Assistant Engineer on 1.4.1987. It is also the case of the petitioner that by the said date he was qualified and possessed the requisite qualifications and experience for regular promotion as Assistant Engineer. It is stated that the 1st respondent Corporation framed adhoc service rules, called A.P. State Housing Corporation Limited Employees Service Rules. As per Rule 3 of the said Rules, Respondent No.2 is the appointing authority for filling up the vacancies in the category of Assistant Engineers and the mode of

recruitment is by direct recruitment and also by promotion. Rule 4 of the said Rules relates to the reservation while effecting the appointments. It is further stated that some of the in-charge engineers filed writ petitions in this Court and obtained directions for consideration of their cases for regularising their services as Assistant Engineers. In the process, the 1st respondent Corporation passed the orders on 4.2.1997 under which the 3rd respondent was promoted as Assistant Engineer against Roster Point No.20, which is intended to be filled from among the candidates belongs to BC-A category under non-graduate engineering quota. Admittedly, the petitioner belongs to BC-B category and senior most in that category. It is also stated that the 3rd respondent belongs to BC-D category. According to the petitioner, when BC-A candidates for whom the Roster Point was reserved are not available, the vacancy has to be filled by the next category of candidates. But, however, the respondent Corporation bypassing the said Rule as provided in Rule 22(d)(1) of the A.P. State & Subordinate Services Rules, 1996 (hereinafter referred to as 'the Rules') and filled the same with 3rd respondent, who belongs to BC-D category. Thus, the appointment of the 3rd respondent by the Corporation is against the Rules. It is also stated that the petitioner was appointed as Work Inspector and joined on 22.4.1986 along with the 3rd respondent. Further, the petitioner was made in-charge Assistant Engineer on 1.4.1987, whereas the 3rd respondent was made in-charge Assistant Engineer on 28.11.1987 i.e., subsequent to the petitioner.

3. Learned counsel for the petitioner contends that the appointment of the 3rd respondent by promotion to the post of Assistant Engineer, who belongs to BC-D category is illegal and contrary to the Rules. The learned counsel also contended that even in the writ appeal – W.A.No.207 of 1996 filed by the Corporation against the order of the learned single Judge, a Division Bench of this Court while disposing of the same observed that the reservation shall be complied strictly keeping in mind that the candidates therein were made in-charge Assistant Engineers in the year 1987. The learned counsel also contended that the impugned order passed by the respondents dated 4.2.1997 also shows that the vacancies were filled following the

rule of roster. When such is the case, non-compliance of the Rules both under the A.P. State & Subordinate Services Rules, 1996 as well as the Rules framed by the Corporation is illegal and without jurisdiction. The learned counsel also referred to the Rules that are framed under G.O.Ms.No. 182, Housing Department, dated 13.11.1991 and also the subsequent rules, which were framed superseding those Rules and in both the Rules, the rule of reservation has been provided. In the Rules framed in G.O.Ms.No. 182, the reservation is provided under Rule 4, as per which the rule of special representation (General Rule 22) shall be applicable to the appointments by direct recruitment to the above categories in this service except insofar as it relates to appointment of physically handicapped persons. Further, as per the Rules framed in G.O.Ms.33, Housing, Dated 26.3.1998, Rule 8 provides for reservation, and the said rule postulates that the Rule of Reservation as existing under the Government Service shall be followed while filling up the posts either by direct recruitment or on promotion in the Corporation for the identical posts. Therefore, learned counsel for the petitioner contended that in view of the said rule position as well as the observations of Division Bench of this Court referred to earlier, the Rule of Reservation has to be followed, which in fact, was followed by the respondents while passing the impugned order dated 4.2.1997. In addition the learned counsel also contended that Rule 2(26) refers to ‘promotion’, which means the appointment of a member of any category or grade of service or a class of service to a higher category, grade, of such service or such class of service; and Rule 4 refers to the method of appointment, as per which the appointment to any service, class or category shall be by one or more of the methods indicated therein, both direct recruitment as well as promotion. Further, Rule 22 provides for ‘Special Representation (Reservation), which provides the roster points. The second proviso to sub-rule (2)(h)(ii) of Rule 22 provides the method to be followed whenever the candidates belong to a particular category or special category are not available, according to which, if a qualified candidate belonging to a particular group of backward classes is not available for appointment, the vacancy reserved to that group shall accrue to the next group. Therefore, the learned counsel contended that

as the Roster Point No.20 against which the 3rd respondent was appointed by promotion, reserved for BC-A group and when the said group candidate is not available, it has to be filled by the next group i.e., BC-B group, but not by the 3rd respondent, who belongs to the

BC-D group. The learned counsel therefore, sought for quashing of the impugned order and to grant all consequential benefits to the petitioner.

4. A counter has been filed on behalf of the respondent-Corporation disputing and denying the claims of the petitioner. In the counter it is stated that the Corporation in pursuance of the orders of this Court appointed three eligible Work Inspectors as Assistant Engineers in the existing vacancies. The 1st respondent, while appointing three Work Inspectors as Assistant Engineers, observed the seniority, qualification, roster and other necessary particulars, and therefore, there is no violation of Rule of Reservation and seniority, and therefore, the impugned orders are not contrary to the A.P. State Housing Corporation Special Service Rules. The petitioner is junior to the Work Inspectors, who were appointed as Assistant Engineers. It is a fact that the petitioner was holding LCE qualification and was sponsored by Employment Exchange, and appointed as Work Inspector. Keeping in view the work load, the petitioner was kept as in-charge Assistant Engineer vide proceedings dated 1.4.1987 to execute the colonies work of all Mandals of erstwhile P.S. Kalwakurty section, till the regular Assistant Engineer is posted. But, the petitioner was not allowed any monetary benefit attached to the Assistant Engineer post. Subsequently, as per the orders of the 1st respondent, the in-charge arrangements given to the petitioner were withdrawn. It is further stated that the tentative seniority list of Work Inspectors has been communicated to all the Work Inspectors in the year 1990. The petitioner or any other Work Inspector have not filed any objection against the said seniority list. It is stated that the Roster Point No.20 of Assistant Engineer category has to be filled from among 'BC-A' candidates under non-graduate engineering quota and by a senior most amongst the said category. As there was no senior and eligible BC-A candidate available, the post was filled up by the BC-D group candidate. Though the petitioner belongs to BC-B group, he is junior to the

Respondent No.3. It is also stated that Sri Ramalingam, Senior Work Inspector belonging to BC-B category has been appointed against O.C. point. The Corporation has taken the seniority as main criteria and also followed the Rule of Reservation. The petitioner has no right to claim his appointment as Assistant Engineer over the seniors working already in the Corporation.

5. A separate counter has been filed on behalf of the 3rd respondent. In the counter it is stated that the petitioner was appointed as Work Inspector on 22.4.1986 and not on 12.3.1986. It is also denied that the petitioner was kept in charge of Assistant Engineer on 1.4.1987. It is stated that Rule 22 of the Rules have no application to the present case. The 3rd respondent also stated that it is not correct to state that no final seniority list is prepared. The 3rd respondent also disputed that the vacancy in which he was appointed was to be filled by a candidate belonging to BC-B group under roster point, on the ground that BC-A candidate was not available, and the same is wrongly mentioned. The Respondent No.3 also stated that he has been working as in-charge Assistant Engineer for the last ten years and as such his services were regularized and he was appointed as regular Assistant Engineer by giving all the benefits respectively. It is also stated that Respondent No.3 is the senior most in BC category and serial No.2 in the general category in the district wise seniority, where as the petitioner is at Sl.No.7 in the BC seniority list. Therefore, the Respondent No.3 sought to dismiss the Writ Petition.

6. At the time of hearing, learned standing counsel for the Corporation contended that the Corporation has taken the seniority and eligibility as the main criteria while passing the impugned order promoting the 3rd respondent as Assistant Engineer. The 3rd respondent is the senior to the petitioner, and therefore, the petitioner cannot have any grievance against the impugned order under which the 3rd respondent was promoted.

7. Learned counsel for the 3rd respondent, however, contended that the Rule of

Reservation is not applicable to the present case, as it is a case where the Work Inspectors were promoted to the post of Assistant Engineers and as such the Rule of Reservation has no application. The learned counsel also contended that though there was a reference in the judgment of the Division Bench of this Court, where the Corporation has directed to follow the Rule of Reservation, the same should be in accordance with the Rules. Therefore, the learned counsel contended that the Rule of Reservation would not be applicable, and therefore, the impugned order is just and proper, and sought for dismissal of the Writ Petition.

8. From the above rival contentions, the issue to be considered is whether the impugned order is sustainable or not?

9. Admittedly, both the petitioner and the 3rd respondent were appointed as Work Inspectors in the 1st Respondent Corporation. It is also admitted that the petitioner belongs to BC-B group, while the Respondent No.3 belongs to BC-D group. It is also not in dispute that the 3rd respondent is senior as per the seniority list in the category of Work Inspectors. Both were holding in-charge post of Assistant Engineer, drawing their own scale of pay by the date of the impugned order, as they were continuing as such since 1987. As number of Work Inspectors were given in-charge Assistant Engineers, their services were not regularized in the said post. Therefore, number of writ petitions were filed and finally a direction was given to consider the cases of the Work Inspectors basing on the seniority. In the said matter, when it was brought to the notice of the Division Bench of this Court by the learned Advocate General, the Division Bench observed that the Rule of Reservation has to be followed. Further, as already referred, the Rules that were framed from time to time clearly provides that the Corporation has to follow the Rule of Reservation while filling up the posts. To the same effect is Rule 4 of 1991 Rules, and also Rule 8 of 1998 Rules. It was also specifically referred that Rule 22 of the Rules which provides the Rule of Reservation. Apart from all this rule position, the Corporation, in fact, followed the Rule of Reservation while passing the impugned order. The vacancy against which the 3rd respondent was appointed was shown at Roster

Point No.20, which is intended to be filled by BC-A candidate. This fact was not disputed by the Corporation in the counter also, apart from the fact that it is evident from the impugned order itself. But, however, while filling up the said post, the Corporation appointed the 3rd respondent, who belongs to BC-D group. As already referred to Rule 22 of the Rules provides that if a roster point is reserved for a particular category or group, and if such category or group candidates are not available, it is to be filled up by the next category or group candidate. Accordingly, when BC-A candidate is not available, it is to be filled by BC-B candidate only. Admittedly, except the petitioner there is no other BC-B candidate, who is claiming to be the senior for filing up the said post. But, contrary to the said Rule, the Corporation selected and appointed Respondent No.3, who belongs to BC-D candidate. Therefore, the filling of the said vacancy by Respondent No.3 is clearly against the Rule of Reservation or representation, as provided in Rule 22 of the Rules. When once a particular vacancy is to be filled in accordance with rota-quota system and if the said rota system is not followed, the action is liable to be set aside for non-observance of the said system. The filling of the vacancy at Roster Point No.20 by the 3rd respondent, who belongs to BC-D group is, therefore, clearly illegal and improper.

10. Under the above circumstances, the impugned order, dated 4.2.1997 is set aside, and consequently, the rejection of the claim of the petitioner by order dated 8.2.1997 is also quashed. The official respondents are directed to consider the case of the petitioner and appoint him against the vacancy in question with all consequential benefits.

11. Though the learned counsel for the 3rd respondent contended that the Rule of Reservation is not applicable for filling up of the posts of Assistant Engineers, in view of the fact that the Rule of Reservation is to be followed only for direct recruitment and not for promotions, but the said contention is devoid of merits in view of the directions of Division Bench of this Court, where the Division Bench directed the Corporation to follow the Rule of Reservation.

12. Under the above circumstances, the Writ Petition is allowed. However, in view of the orders passed by the Government in G.O.Rt.No. 114, the respondents shall continue the 3rd respondent as in-charge Assistant Engineer, drawing his own scale of pay, till his turn comes up for consideration. No costs.

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S. Ananda Reddy, J.

Dt. 08..10..2004

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Friday the Eight day of Two thousand and Four.

REGISTRAR

TO

1. The Managing Director, Andhra Pradesh State Housing Corporation,Hyderabad, Urdugally Himayathnagar, Hyderabad.
2. The District Collector/Executive Director, Mahabubnagar District/A.P.State Housing Corporation Ltd., Mahabubnagar.

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THE HON'BLE MR. JUSTICE S. ANANDA REDDY

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W.P.No.3277 of 1997

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